UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AT&T MOBILILTY, LLC

And Case 5-CA-178637

MARCUS DAVIS, AN INDIVIDUAL

COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION
TO RESPONDENT'S MOTION TO POSTPONE HEARING

Based on a charge filed by Marcus Davis, an Individual, (the Charging Party) the Regional Director for Region Five of the National Labor Relations Board (the Regional Director) issued a Complaint and Notice of Hearing (the Complaint) on October 14, 2016 in the above-captioned case. The case is currently set for hearing on February 10, 2017. On February 7, 2017, Respondent AT&T Mobility (the Respondent) filed a motion requesting that the Division of Judges postpone the hearing. In addition to proposing dates for hearing, the Respondent proposes bifurcating the hearing to receive evidence regarding individual allegations involving a threat against the Charging Party on February 10, 2017, followed by a second hearing date regarding "'policy' issues" on February 15, 16, 17, 22, 23, or 24, 2017. (Mot. at 1.) The counsel for the General Counsel opposes the Respondent's request for postponement.[1]

The National Labor Relations Act (the Act) "makes it clear that the proceedings . . . must proceed with the utmost dispatch." *NLRB v. Glacier Packing Co*., 507 F.2d 415, 416 (9th Cir.

[1] To the extent that the Respondent would request that the entire hearing be postponed to February 15, 16, 17, 22, 23, or 24, 2017, it is the counsel for the General Counsel's understanding that the Charging Party has a previously scheduled vacation between February 19 and March 4, 2017, and would be unavailable between those dates.

1974). Accordingly, "postponements of proceedings are not a matter of right; rather, they are to be either granted or denied upon consideration of the inconvenience and possible unfairness to other affected parties as against a claimed hardship of the party making the request . . . while keeping in mind that these proceedings must proceed with the utmost dispatch." *Jacques Syl Knitwear, Inc*., 247 NLRB 1525, 1529–30 (1980).

The Respondent contends that it "remains interested and willing to make a settlement proposal" and claims that the "Region's objection . . . is based solely on principle and does nothing to facility a possible settlement of this case . . ." (Mot. at 1.) Yet the history of this case demonstrates otherwise. Region Five of the National Labor Relations Board (the Region) proposed a pre-complaint informal settlement offer to the Respondent's in-house counsel on or about October 5, 2016. After the Respondent retained outside counsel, the Region again provided a copy of the proposed settlement on or about October 12, 2016. A Complaint and Notice of Hearing in this matter issued on October 14, 2016, and the counsel for the General Counsel proposed a post-complaint informal settlement offer to the Respondent on November 21, 2016. The same day, the Respondent requested that this matter be transferred, consolidated, or postponed. The Region did not oppose a reasonable postponement, and, on December 2, 2016, the Regional Director issued an order rescheduling the hearing until February 10, 2017. In the intervening months, the counsel for the General Counsel has made several inquiries regarding the possibility of settlement. However, the Respondent has not made an actual settlement counteroffer in the approximately four months since the Region's initial offer.

Now—just three days before the long-scheduled hearing—the Respondent requests another postponement without having made a single counteroffer. In fact, despite having the Region's informal settlement proposal for more than four months, being granted a prior

postponement, and repeated inquiries from the counsel for the General Counsel, the Respondent not yet given internal *approval* to make a firm settlement offer. (*See* Mot. at 1.) The counsel for the General Counsel's objection therefore is not based simply on principle, but rather the Respondent's failure to make a single counteroffer in approximately four months since originally receiving a settlement proposal in this case. Although the counsel for the General Counsel appreciates the Respondent's representation that it does not request the postponement for the purposes of delay, the Respondent's history to this point provides no basis to conclude that a second postponement would result in anything but further delay.

Moreover, the Respondent neither explained why it cannot simply present evidence regarding "policy issues" on February 10, nor demonstrated how postponing its presentation of evidence regarding "policy issues" until a second hearing date serves either the interests of the Act or of judicial economy. Indeed, the Respondent will remain free to settle this case at the hearing, or at any other point in this case. In this regard, Respondent has demonstrated no hardship to proceeding with its case on the long-scheduled hearing date.

Further, a second hearing date would require the scheduling of a second court reporter, incurring additional and unnecessary costs to the National Labor Relations Board. In addition, both the counsel for the General Counsel and the Division of Judges will be required to hold additional hearing dates on their schedules. Given the Board's interest in expeditious handling of cases, the Respondent's failure to demonstrate any hardship, and the additional costs associated with holding two separate hearings, the Division of Judges should not accommodate the Respondent's position of its own making. *See J. M. Tanaka Construction, Inc.*, 249 NLRB 238, 238 n.5 (1980) ("While the Board attempts to balance the needs of individual parties against its statutory mandate to speedily resolve industrial strife, it will not accommodate parties who

have been placed in untenable positions of their own making."), enforced, 675 F.2d 1029, 1035–36 (9th Cir. 1982).

The counsel for the General Counsel has been and remains interested in settling this matter short of litigation, and will respond expeditiously to any and all good-faith settlement counteroffers from the Respondent. Furthermore, the counsel for the General Counsel would welcome the opportunity to have good-faith settlement discussions on the long-scheduled hearing date of February 10, 2017—a date which the Respondent and its internal approvers have long been aware of. However, for all the reasons set forth above, counsel for the counsel for the General Counsel respectfully requests that Respondent's Motion to Postpone Hearing be denied.

Dated at Washington, DC, this 8th day of February 2017.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this Counsel for the General Counsel's Opposition To Respondent's Motion To Postpone Hearing on February 8, 2016, and, on that same day, copies were electronically served on the following individuals by electronic mail:

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